Paper No. 27

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HERBERT M. STUTTLER

Appeal No. 2002-0721
Application No. 08/930,100

ON BRIEF

Before FLEMING, RUGGIERO, and DIXON, ***Administrative Patent Judges.***

FLEMING, ***Administrative Patent Judge***.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 13 through 46, all the claims pending in the present application. Claims 1 through 12 have been canceled.

The invention relates to a method and apparatus to ascertain what a person really sees. In particular, the invention is a

and establishes a fixation point of said pair of eyes based on the stereo based distance and the respective alignment direction and aligns the camera towards the fixation point to collect said image information.

Independent claim 13 present in the application is reproduced as follows:

13. A method for capturing image information parallel to the visual detection of image information by a pair of eyes, said method comprising the steps of:

a) providing an image-recording system arranged in correspondence with said pair of eyes, and control means for changing the alignment of said image recording system;

b) measuring a stereo base distance between said pair of eyes;

c) measuring a respective alignment direction for each of said pair of eyes;

d) establishing a fixation point of said pair of eyes based on said stereo base distance and said respective alignment directions; and

e) aligning said image-recording system toward said fixation point to collect said image information.

References

The references relied on by the Examiner are as follows:

Rejections at Issue

Claims 13 through 20 and 25 through 46 stand rejected under 35 U.S.C. § 102 as being anticipated by Lamprecht.

Claims 21 through 24 and 38 through 43 stand rejected under 35 U.S.C. § 103 as being unpatentable over Lamprecht in view of Taboada and Robinson.

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the brief and the answer[1] for the respective details thereof.

OPINION

With full consideration being given to the subject matter on appeal, the Examiner's rejections and arguments of Appellant and Examiner for the reasons stated ***infra***, we reverse the rejection of claims 13 through 20 and 25 through 46 under 35 U.S.C. § 102 and claims 21 through 24 and 38 through 43 under 35 U.S.C. § 103.

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[1] The Examiner's Answer was mailed on October 23, 2000. An order remanding to the Examiner was mailed on April 30, 2002

We first will address the rejection of claims 13 through 20 and 25 through 43 under 35 U.S.C. § 102 as being anticipated by Lamprecht. Appellant argues that Lamprecht does not disclose measuring a stereo base distance between the pair of eyes as required by Appellant's claim 13. Appellant also argues that Lamprecht does not disclose using the stereo base distance and the alignment directions to establish a fixation point as required by Appellant's claim 13.

As pointed out by our reviewing court, we must first determine the scope of the claim. "[T]he name of the game is the claim." ***In re Hiniker Co.***, 150 F.3d 1362, 1369, 47 USPQ 1523, 1529 (Fed. Cir. 1998). As our reviewing court further states that "the terms used in the claims bear a 'heavy presumption' that they mean what they say and have the ordinary meaning that would be attributed to those words by persons skilled in the relevant art." ***Texas Digital Systems, Inc. v. Telegenix, Inc.,*** 308 F.3d 1193, 1201-02 (Fed. Cir. 2002).

We note that independent claim 13 recites

> b) measuring a stereo base distance between said pair of eyes;
>
> c) measuring a respective alignment direction for each of said pair of eyes;
>
> d) establishing a fixation point of said pair of eyes based on said stereo base distance and said respective alignment directions; and
>
> e) . . . .

Furthermore, we note that claims 14 through 20 and 25 through 43 are dependent upon claim 13 and thereby, through their dependency, require the above limitation.

It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim. ***See In re King***, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986) and ***Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co.***, 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

For the above limitations, the Examiner argues that Lamprecht discloses these steps in column 5, lines 18 through 35. See page 6 of the answer. The Examiner also points to Lamprecht

stereo base distance between said pair of eyes, measuring a respective alignment direction for each of said pair of eyes and establishing a fixation point of said pair of eyes based upon said stereo base distance and alignment directions. In particular, Lamprecht teaches in column 1, lines 8 through 12, that the invention relates to a process and device for the projection of image information before at least one eye of a person having a visual impairment. The visual impairment is caused by the deviation of the angular position of the optical axis of one eye from the optical axis of the other eye. Lamprecht further teaches in column 1, lines 14 through 26, that the impairment of the mobility of an eye or a permanent different position of the optical axes of the pair of eyes, generally known as being cross-eyed, causes double vision because of the different image segments seen by the two eyes. Thus, Lamprecht is trying to correct a persons' vision who has a visual impairment in which there is no fixation point of the pair of eyes.

Lamprecht teaches in column 4, lines 50 through 58 that the figure shows a device that has two infra-red CCD cameras 1, 2 in a helmet which can be placed on the head of a cross-eyed person. The CCD cameras 1, 2 detect the movement of the eyes A1, A2 of the cross-eyed person. The infra-red CCD cameras 1, 2 are connected to an evaluation device 3 which supplies information on the angular position of the optical axes of the eyes A1, A2 to an image-producing device 4. In column 4, lines 59 through 68, Lamprecht teaches that two cameras 5, 6 which are also mounted on the helmet, are connected to the image-producing device 4. In column 5, lines 30 through 35, Lamprecht teaches that the image producing device 4 produces an image adapted to the visual disorder of the viewer from the image of camera 6 assigned to the non-leading eye A2. This image is projected by the projection device 9 or 10 on the screen 12 placed before the eye A2. Thus, the non-leading eye is provided with an image of what a normal eye would see.

We fail to find that Lamprecht teaches a method of capturing

fixation point of the pair of eyes based on the stereo base distance and the respective alignment direction as required by claim 13. This is because Lamprecht is dealing with a person who is cross-eyed in which there is no fixation point of the pair of eyes for the cameras to be aligned with because the optical axes of eyes A1, A2 do not converge to a point of regard in a cross-eyed individual. Therefore, we will not sustain the rejection of claims 13 through 20 and 25 through 43.

We now turn to the rejection of claims 44 through 46 under 35 U.S.C. § 102 as being anticipated by Lamprecht. Appellant argues that Lamprecht does not disclose at least one camera arranged in correspondence with the pair of eyes, at least one camera having an optical parameter in common with said pair of eyes.

We note that claim 44 recites

> an image recording system for capturing image information parallel to the visual detection of image information by a pair of eyes, said image recording system comprising, at least one camera arranged in correspondence with said pair of eyes, said at least one camera having an optical parameter in common with

Lamprecht shows in the Figure that cameras 5, 6 correspond to eyes A1, A2. In column 4, lines 59 through 68, Lamprecht teaches that cameras 5, 6 are changed in the angle of vision of the leading eye A1 or A2. Thus, Lamprecht teaches a camera arranged in correspondence with an eye, said camera having an optical parameter in common with an eye. Lamprecht fails to teach at least one camera arranged in correspondence with said **pair of eyes**, said at least one camera having an optical parameter in common with said **pair of eyes**. Therefore, we will not sustain the Examiner's rejection of claims 44 through 46 as being anticipated by Lamprecht under 35 U.S.C. § 102.

We now turn to the Examiner's rejection of claims 21 through 24 and 38 through 43 under 35 U.S.C. § 103 as being unpatentable over Lamprecht in view of Taboada and Robinson. We note that claims 21 through 24 and 38 through 43 are dependent upon claim 13 and thereby include all limitations of claim 13. We further note that the Examiner relies on Lamprecht for the above discussed limitations of claim 13 in this rejection.

In view of the foregoing, we have not sustained the rejection of claims 13 through 20 and 25 through 46 under 35 U.S.C. § 102. Furthermore, we have not sustained the rejection of claims 21 through 24 and 38 through 43 under 35 U.S.C. § 103. Accordingly, the Examiner's decision is reversed.

REVERSED

MICHAEL R. FLEMING Administrative Patent Judge	)	
JOSEPH F. RUGGIERO Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
JOSEPH L. DIXON Administrative Patent Judge	)	

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HODGSON RUSS LLP
INTELLECTUAL PROPERTY LAW GROUP
ONE M & T PLAZA SUITE 2000
BUFFALO, NY 14203-2391